federal procedure that when multiple services upon the federal government and its agencies are required, plaintiff's inadvertence in servicing only one gives no grounds for dismissal of the named defendant U.S. government as alleged by district judge in the present case. Because summary dismissal requires the Circuit to fully review the case afresh, justice requires new service to all original named defendants having not answered, compelling them to answer to same. Fourth Circuit is well aware of these facts of rule and should have allowed reservice to U.S. Defendant originally named in the present case because U.S. Defendant's conduct is reflected under federal color pursuant to the fact that plaintiff's depositions were compelled by U.S. District Court as pointed out by the district judge in his ORDER of Dismissal, also considering the fact that U.S. defendant uses the Bible in its administrative government functions and/or forum, conduct to which the petitioner is subjected and confronted.

U.S.C.S 42: 1983 Applies In This Case

Defendants Graham and Bollard were acting under color of North Carolina State's General Statute Chapter 11-2.

> **"§ 11-2. Administration of oaths.**
> **Judges and other persons who may be empowered to administer oaths, shall (except in the cases in this Chapter excepted) require the party to be sworn to lay his hand upon the Holy Scriptures, in token of his engagement to speak the truth and in further token that, if he should swerve from the truth, he may be justly deprived of all the blessings of that holy book and made liable to that vengeance which he has imprecated on his own head. (1777, c. 108, s. 2, P.R.; R.C., c. 76, s. 1; Code, s. 3309; Rev., s. 2354; C.S., s. 3189; 1941, c. 11; 1971, c. 381, s. 9; 1985, c. 756, s. 2.)"**

Defendants, court reporters, by their own affirmance were acting under certification "in and for the state of North Carolina" and more importantly acting in compliance with NC state statutes' oath-giving regulations as currently exists in NC General Statute Chapter 11, a copy of which is attached and exhibited in the appendix to this petition. Thus, plaintiff's standing to challenge the policy of North Carolina General Statute Chapter 11 oath process is clear.

IN CONCLUSION

In conclusion WRIT OF CERTIORARI should be granted.

Solemn affirmed and respectfully submitted this 12th day of July, 2005.

Michael Craig Clark
a/k/a
Rabbi Meekhael Shane Sofer
122 Juniper Street
Hertford, NC 27944

APPENDIX

U.S. DISTRICT COURT ORDER

FILE STAMP (set off by asterisks:)
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9-27-04 "s/js"
CLERK
US DISTRICT COURT, EDNC
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IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
2:04-CV-1-BO(2)

MICHAEL CRAIG CLARK, a/k/a Michael Shane Sofer,

Plaintifff,

v.

STEPHANIE C. GRAHAM; RICHARD BOLLARD; PERQUIMANS COUNTY; STATE OF NORTH CAROLINA; UNITED STATES OF AMERICA,

Defendants.

ORDER

This matter is before the Court on Defendant Stephanie Graham's January 16, 2004 Motion to Dismiss; Defendant Richard Bollard's January 20, 2004 Motion to Dismiss; Defendant Perquimans County's January 20, 2004 Motion to Dismiss; Defendant State of North Carolina's January 21, 2004 Motion to Dismiss; Plaintiff's January 28, 2004 Motion for Declaratory Judgment and Injunctive Relief; Defendant Perquimans County's March 17, 2004 Motion for Sanctions; and Defendant United States of America's June 24, 2004 Motion to Dismiss. The underlying claims in this case arise from Plaintiff's objection to the use of a

bible during the administration of his oath to tell the truth prior to giving testimony in a deposition for another case.

For the reasons discussed below, all Defendant's Motions to Dismiss are GRANTED and Plaintiff's claims are DISMISSED. Further, Plaintiff's Motion for Declaratory Judgment is DISMISSED AS MOOT. Defendant Perquimans County's Motion for Sanctions is DENIED. Defendants Graham and Bollard's requests for attorney fees are DENIED.

BACK GROUND

The events giving rise to this case occurred on two separate occasions. On July 22, 2003, Plaintiff appeared at the Perquimans County Courthouse to be deposed for a case unrelated to the claims in the case at bar. Appearing at the deposition were the court reporter, the opposing counsel, and Plaintiff, proceeding *pro se*. Defendant Graham was the court reporter present for the deposition that day. On December 16, 2003, Plaintiff appeared for a second deposition at the same courthouse. On this day, however, it was not Defendant Graham who was to serve as court reporter for the deposition, but, rather, Defendant Bollard, who is a business associate of Defendant Graham.

As is the custom for depositions, both Defendant Graham and Defendant Bollard, respectively, attempted to administer an oath of veracity to Plaintiff. Plaintiff declined to take an oath but indicated that he would be willing to affirm to tell the truth, Plaintiff asserted a right resembling the Fifth Amendment right against self-incrimination and refused to answer the question. When opposing counsel sought to clarify Plaintiff's refusal, Plaintiff repeated asserted his right to remain silent to the point where he would not even confirm his name to opposing counsel. At that point, opposing counsel adjourned the deposition. Notwithstanding Plaintiff's recalcitrance, Defendant Graham prepared a record on which today's claims are based.

The December 16 deposition ended similarly, although the court is not privy to the verbatim exchange from that encounter. Plaintiff complains of Defendant Bollard's efforts at administering

an oath as well. A mere seventeen days after the second attempted deposition, Plaintiff filed his complaint, seeking relief under 42 U.S.C. § 1983 against Defendant Graham and Bollard and under 42 U.S.C. § 1985 and 28 U.S.C. § 1331 against Defendant Perquimans County. Further, he pursued Defendants State of North Carolina and United States of America under 28 U.S.C. § 1331. As stated above, all Defendants filed motions to dismiss and Defendant Perquimans County seeks Fed. R. Civ. P. 11 sanctions. Further, Plaintiff seeks declaratory judgment and injunctive relief. All motions are ripe for review.

ANALYSIS

42 U.S.C. § 1983 gives plaintiffs a civil action for deprivation of rights secured by the Constitution and laws of the United States when those rights are deprived by a person acting under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia. 42 U.S.C. § 1983. To state a claim under § 1983, plaintiff must allege violation of rights secured by the Constitution and laws of the United States, and must show that alleged deprivation was committed by a person acting under color of state law. *West v. Atkins,* 487 U.S. 42, 48 (1988). Like the state-action requirement of the Fourteenth Amendment, the under-color-of-state-law element of § 1983 excludes from its reach merely private conduct, no matter how discriminatory or wrongful. *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999). Where a private individual is a defendant in § 1983 action, there must be showing that the private party and the state actor jointly deprived plaintiff of his civil rights. *Alexis v. MacDonald's Restaraunts of Massachusetts, Inc.*, 67 F.3d 341, 351 (1st Cir. 1995). Here, Plaintiff has provided no evidence that Defendants Graham and Bollard acted under color of state law. Accordingly, Defendants Graham's and Bollard's Motion to Dismiss are GRANTED. Defendants Graham's and Bollard's Motions for Attorney Fees are DENIED.

The Court will next address Defendant United States of America's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(5)

for Plaintiff's failure to comply with the required service on the United States Attorney's Office for the Eastern District of North Carolina as required by Rule 4(i) with the time limitation of Rule 4(m). Rule 12(b)(5) permits a party to defend against a claim based on insufficiency of process. Fed. R. Civ. P. 12(b)(5). When serving the United States as a defendant, a party must serve according to the specific requirements of Rule 4(i), which include service of the local U.S. Attorney or his designates and mailing a copy of the summons and the complaint to the Attorney General in Washington, D.C. Fed. R. Civ. P. 4(i). Service of process is insufficient when service is not made on a defendant within 120 days after the filing of the complaint. Fed. R. Civ. P. 4(m). Here, proper service has not been effected but should have been done so by May 1, 2004. Thus, service is ineffective. Further, Plaintiff has not responded to Defendant United States' Motion by showing either good cause for his delay or excusable neglect. Accordingly, Defendant United States' Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(5) is GRANTED.

The Court next turns to Plaintiff's claim against Defendant State of North Carolina, which appears to be predicated on 28 U.S.C. § 1331– a purely jurisdictional statute. However, the Court will construe the *pro se* allegations as making out two Establishment Clause violations: the language of N.C. Gen. Stat. § 11-1 and the presence of bibles in the courthouse.

As to the first allegations, Plaintiff has no standing to challenge N.C. Gen. Stat. § 11-1. He was not made to affirm pursuant to N.C. Gen. Stat. § 11-1 but rather Fed. R. Civ. P. 43, which governs the giving of testimony in a federal action. At no point has Plaintiff alleged that he was forced to testify in a state proceeding during which he had to use a bible or make reference to a higher power, thereby implicating N.C. Gen. Stat. § 11-1. Thus, Plaintiff has suffered no cognizable injury under Section 11-1 and cannot maintain standing to attack it.

As to the second allegation, Plaintiff alleges that the presence of a bible during his attempted deposition amounts to an Establishment Clause violation. The presence of bibles in a county courthouse does not amount to the establishment of a state religion

where such bibles have a secular purpose. *See Peck v. Upshar County Bd. of Educ.*, 155 F.3d 274 (4th Cir. 1998). Here, the bibles have the secular purpose of impressing upon would-be witnesses the solemnity of their oath to tell the truth and consequences of perjury. Accordingly, Defendant State of North Carolina's Motion to Dismiss is GRANTED, and Plaintiff's claim is DISMISSED.

Finally, the Court addresses Plaintiff's claim against Defendant Perquimans County. For the reasons discussed above in reference to Plaintiff's claim against Defendant State of North Carolina, Defendant Perquimans County's Motion to Dismiss is GRANTED.[1] Because the Court recognizes Plaintiff *pro se* status and his lack of formal legal training, the Court declines to impose Rule 11 sanctions against Plaintiff. Accordingly, Defendant Perquimans County's Motion for Sanctions is DENIED.

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[1] Plaintiff makes and allegation of a 42 U.S.C. § 1985 violation against Defendant Perquimans County, but he has alleged no facts showing an agreement between the two persons to deprive him of his civil rights. That claim fails as a matter of law.

CONCLUSION

In conclusion, all Defendants' Motions to Dismiss are GRANTED, and all Plaintiff's claims are DISMISSED. Defendant Perquimans County's Motion for Sanctions is DENIED. Defendants Graham's and Bollard's Motion for attorney's fees pursuant to 42 U.S.C § 1988 are DENIED. Plaintiff's Motion for Declaratory Judgment is DISMISSED AS MOOT.

SO ORDERED.

This 22 day of September, 2004.

"s/ Terrence W. Boyle"
TERRENCE W. BOYLE
CHIEF UNITED STATES DISTRICT JUDGE

COURT SEAL (set off by asterisks):

****

I certify the foregoing to be a true and correct copy of the original.

, Clerk
United States District Court
Eastern District of North Carolina
By "s/ J?m Sk"
Deputy Clerk

****

4TH CIRCUIT U.S. COURT OF APPEALS
UNPUBLISHED PER CURIAM OPINION

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04 – 2361

MICHAEL CRAIG CLARK

Plaintiff – Appellant,

versus

STEPHANIE C. GRAHAM: RICHARD BOLLARD; PERQUIMANS COUNTY; STATE OF NORTH CAROLINA; UNITED STATES OF AMERICA,

Defendants – Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Elizabeth City. Terrence W. Boyle, Chief District Judge. (CA-04-1-2-BO)

Submitted: March 30, 2005 Decided: April 15, 2005

Before NIEMEYER and MOTZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Michael Craig Clark, Appellant Pro Se. Charles Everett Thompson, II, Elizabeth City, North Carolina; Mark Allen Davis, WOMBLE, CARLYLE, SANDRIDGE & RICE, Raleigh, North Carolina; David Roy Blackwell, Assistant Attorney General, Raleigh, North Carolina, Rudolph A. Renfer, Jr., Assistant United States Attorney, Raleigh, North Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See local Rule 36(c).

PER CURIAM:

Michael Craig Clark appeals the district court's order denying relief on his civil complaint filed pursuant to 42 U.S.C. §§ 1983, 1985 (2000). We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. See Clark v. Graham, No. CA-04-1-2-BO (E.D.N.C. Sept. 27, 2004). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

CONSTITUTIONAL REFERENCES

U.S. Constitution, First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Constitution, Fourteenth Amendment, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C.S. 1983

Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C.S. 1985

Conspiracy to interfere with civil rights

(1) Preventing officer from performing duties If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;
(2) Obstructing justice; intimidating party, witness, or juror If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;
(3) Depriving persons of rights or privileges If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal

protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

28 U.S.C.S. 1331

Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

North Carolina General Statutes Chapter 11. Oaths.

Article 1.
General Provisions.
§ 11-1. Oaths and affirmations to be administered with solemnity.
Whereas, lawful oaths for discovery of truth and establishing right are necessary and highly conducive to the important end of good government; and being most solemn appeals to Almighty God, as the omniscient witness of truth and the just and omnipotent avenger of falsehood, and whereas, lawful affirmations for the discovery of truth and establishing right are necessary and highly conducive to the important end of good government, therefore, such oaths and affirmations ought to be taken and administered with the utmost solemnity. (1777, c. 108, s. 2, P.R.; R.C., c. 76, s. 1; Rev., s. 2353; C.S., s. 3188; 1985, c. 156, s. 1.)

§ 11-2. Administration of oaths.
Judges and other persons who may be empowered to administer oaths, shall (except in the cases in this Chapter excepted) require the party to be sworn to lay his hand upon the Holy Scriptures, in token of his engagement to speak the truth and in further token that, if he should swerve from the truth, he may be justly deprived of all the blessings of that holy book and made liable to that vengeance which he has imprecated on his own head. (1777, c. 108, s. 2, P.R.; R.C., c. 76, s. 1; Code, s. 3309; Rev., s. 2354; C.S., s. 3189; 1941, c. 11; 1971, c. 381, s. 9; 1985, c. 756, s. 2.)

§ 11-3. Administration of oath with uplifted hand.
When the person to be sworn shall be conscientiously scrupulous of taking a book oath in manner aforesaid, he shall be excused from laying hands upon, or touching the Holy Gospel; and the oath required shall be administered in the following manner, namely: He shall stand with his right hand lifted up towards heaven, in token of his solemn appeal to the Supreme God, and

also in token that if he should swerve from the truth he would draw down the vengeance of heaven upon his head, and shall introduce the intended oath with these words, namely: I, A.B., do appeal to God, as a witness of the truth and the avenger of falsehood, as I shall answer the same at the great day of judgment, when the secrets of all hearts shall be known (etc., as the words of the oath may be). (1777, c. 108, s. 3, P.R.; R.C., c. 76, s. 2; Code, s. 3310; Rev., s. 2355; C.S., s. 3190.)

§ 11-4. Affirmation in lieu of oath.
When a person to be sworn shall have conscientious scruples against taking an oath in the manner prescribed by G.S. 11-2, 11-3, or 11-7, he shall be permitted to be affirmed. In all cases the words of the affirmation shall be the same as the words of the prescribed oath, except that the word "affirm" shall be substituted for the word "swear" and the words "so help me God" shall be deleted. (1777, c. 108, s. 4, P.R.; c. 115, s.42, P.R.; 1819, c. 1019, P.R.; 1821, c. 1112, P.R.; R.C., c. 76, s. 3; Code, s. 3311; Rev., s. 2356; C.S., s. 3191; 1985, c. 756, s. 3.)

§ 11-5. Oaths of corporations.
In all cases where a corporation is appointed administrator, executor, collector, or to any other fiduciary position, of which fiduciary an oath is required by law, such oath may be taken by such corporation by and through any officer or agent of said corporation who is authorized by law to verify pleadings in behalf of such corporation; and any oath so taken shall be valid as the oath of such corporation. Any oath heretofore taken in the manner aforesaid in behalf of a corporation as such fiduciary is hereby validated as the oath of such corporation. (1919, c. 89, ss. 1, 2; C.S., s. 3192.)

§ 11-6: Repealed by Session Laws 1985, c. 756, s. 4.

§ 11-7. Oath or affirmation to support Constitutions; all officers to take.

Every member of the General Assembly and every person elected or appointed to hold any office of trust or profit in the State shall, before taking office or entering upon the execution of the office, take and subscribe to the following oath: "I, _____, do solemnly and sincerely swear that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; so help me God." (1781, c. 342, s. 1, P.R.; R.C., c. 76, s. 4; Code, s.3312; Rev., s. 2358; C.S., s. 3194; 1985, c. 756, s. 5.)

Picture of Bibles for administrative use
in the Perquimans County, NC Courthouse



